

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION-DETROIT

J & J SPORTS PRODUCTIONS, INC.

Plaintiff,

v.

LB ENTERTAINMENT, INC. a
Michigan Corporation, D/B/A CLUB
STATUS, AND MIKEY BROWN
AND EYVONE JONES, individuals,
Jointly and Severally,

Defendants.

No. 2:14-cv-12236-MFL-MKM
Hon. Matthew F. Leitman
Hon. Mona K. Majzoub (referral)

**SECOND MOTION FOR AN ORDER FOR ALTERNATE SERVICE
UPON DEFENDANTS MIKEY BROWN AND EYVONE JONES AND
EXTENDING TIME TO SERVE THE SUMMONS AND COMPLAINT
30 DAYS TO PERFECT ALTERNATE SERVICE**

COMES NOW, the Plaintiff, J & J Sports Productions, Inc., through undersigned counsel, and moves the Court for an Order Allowing Alternate Service Upon Mikey Brown and Eyvone Jones, and enter an Order extending the time to serve the Summons and Complaint upon all defendants for a Reissued Summons as to all Defendants for 30 days for the limited purpose of perfecting alternate service. This Motion is supported by a verifying Affidavit of Plaintiff's

Counsel, attached hereto as Exhibit 14. In support of this Motion, Plaintiff's counsel states:

1. This case was filed on 06/05/2014, and a Summons for each defendant was thereafter issued by the court clerk. Once the Summonses were issued, Plaintiff's counsel went about attempting to serve the Summons and Complaint upon each defendant.
2. The Defendants in this case are LB Entertainment, Inc., a Michigan Corporation, Mikey Brown, and Evyone Jones. The Defendants have been difficult to locate and serve with a copy of the summons and complaint.
3. 06/09/2014: Plaintiff sent each defendant a copy of the summons and complaint at the registered address maintained by the State of Michigan Department of Licensing and Regulatory Affairs by First Class Mail, with a form "Notice of Lawsuit & Request to Waive Service of Summons."
[Affidavit Exhibit 1].
4. As is plaintiff's counsel's practice, it waited 30 days for a response to the Notice of Lawsuit & Request to Waive Service of Summons. After having no response, Plaintiff began research on last known addresses for the individual defendants, and attempted to serve them by mail.
5. 07/14/2014: Plaintiff's counsel sent a copy of the Summons and Complaint by Certified US Mail, Return Receipt Requested, Delivery Restricted to

Mikey Brown at 20551 Asbury Park Detroit, MI 48235, by certified article no. 7014 0510 0000 1251 7972. After the USPS Completed attempts to deliver the mail, it was returned on 07/26/2014 as “undeliverable, unable to forward.” **[Affidavit Exhibit 2]**.

6. 07/14/2014: Plaintiff’s counsel sent a copy of the Summons and Complaint by Certified US Mail, Return Receipt Requested, Delivery Restricted to Evyone Jones at 22909 W 8 Mile Rd. Detroit MI 48219, by certified article no. 7014 0510 0000 1251 7989. After the USPS Completed attempts to deliver the mail, it was returned on 08/06/2014 as “undeliverable, unclaimed, unable to forward.” **[Affidavit Exhibit 3]**.
7. 07/14/2014: Plaintiff’s counsel sent a copy of the Summons and Complaint by Certified US Mail, Return Receipt Requested, Delivery Restricted to Mikey Brown, Registered Agent of LB Entertainment, Inc. at 22909 W 8 Mile Rd. Detroit MI 48219, by certified article no. 7014 0510 0000 1251 7965. After the USPS Completed attempts to deliver the mail, it was returned on 08/06/2014 as “unclaimed, unable to forward.” **[Affidavit Exhibit 4]**.
8. After unsuccessful attempts to serve the Plaintiffs by mail, Plaintiff’s counsel hired a professional third party process server, Allen & Hope Process Serving, to attempt to locate and serve Mikey L. Brown.

9. The Process Server's Affidavit of Due Diligence lists the following attempts at personal service of the Summons and Complaint upon Defendant Brown.

[Affidavit Exhibit 5].

- a. 9/10/2014 11:12 am Attempted service: 22909 W Eight Mile Road, Detroit, MI 48219 THIS BUSINESS IS CLOSED. NO LONGER IN BUSINESS. LEFT BUSINESS CARD.
- b. 9/22/2014 9:05 am THROUGH SEARCH FOUND POSSIBLE NEW ADDRESS OF 45882 DUTTON DR UNIT 74 MACOMB MI 48044-4090.
- c. 9/23/2014 11:00 am Attempted Service: 45882 DUTTON DR UNIT 74 MACOMB MI 48044, NO ANSWER, NO VEHICLES, LEFT BUSINESS CARD
- d. 9/27/2014 6:50 pm Attempted Service: 45882 DUTTON DR UNIT 74 MACOMB MI 48044, NO ANSWER, BUSINESS CARD STILL THERE, LEFT ANOTHER
- e. 9/30/2014 2:12 pm Attempted Service: 45882 DUTTON DR UNIT 74 MACOMB MI 48044-4090, NO ANSWER, BUSINESS CARD STILL THERE, LEFT ANOTHER, SPOKE TO NEIGHBOR WHITE FEMALE STATES SHE HAS NOT SEEN THEM IN A WHILE THEY MUST BE ON VACATION WHEN I ASKED IF SHE KNEW THERE NAMES SHE STATED SURE I DO BUT I WOULDN'T TELL YOU.
- f. 10/3/2014 8:21 am. Attempted Service: 45882 DUTTON DR UNIT 74 MACOMB MI 48044-4090, NO ANSWER, NO VEHICLES, LEFT BUSINESS CARD, NO ANSWER AT NEIGHBORS, COULD SEE FURNITURE AND STUFF INSIDE NOT LIGHTS ON.
- g. The cost for attempted service by this method was \$10.00.

10. The Process Server's Affidavit of Due Diligence lists the following attempts at personal service of the Summons and Complaint upon Evyone Jones,

which are similar to Mikey Brown, because evidently the research done by the process server discovered the two defendants cohabitating. **[Affidavit Exhibit 6].**

- a. 9/10/2014 11:12 am Attempted service: 22909 W Eight Mile Road, Detroit, MI 48219 THIS BUSINESS IS CLOSED. NO LONGER IN BUSINESS. LEFT BUSINESS CARD.
- b. 9/22/2014 9:05 am THROUGH SEARCH FOUND POSSIBLE NEW ADDRESS OF 45882 DUTTON DR UNIT 74 MACOMB MI 48044-4090.
- c. 9/23/2014 11:00 am Attempted Service: 45882 DUTTON DR UNIT 74 MACOMB MI 48044, NO ANSWER, NO VEHICLES, LEFT BUSINESS CARD
- d. 9/27/2014 6:50 pm Attempted Service: 45882 DUTTON DR UNIT 74 MACOMB MI 48044, NO ANSWER, BUSINESS CARD STILL THERE, LEFT ANOTHER
- e. 9/30/2014 2:12 pm Attempted Service: 45882 DUTTON DR UNIT 74 MACOMB MI 48044-4090, NO ANSWER, BUSINESS CARD STILL THERE, LEFT ANOTHER, SPOKE TO NEIGHBOR WHITE FEMALE STATES SHE HAS NOT SEEN THEM IN A WHILE THEY MUST BE ON VACATION WHEN I ASKED IF SHE KNEW THEIR NAMES SHE STATED SURE I DO BUT I WOULDN'T TELL YOU.
- f. 10/3/2014 8:21 am. Attempted Service: 45882 DUTTON DR UNIT 74 MACOMB MI 48044-4090, NO ANSWER, NO VEHICLES, LEFT BUSINESS CARD, NO ANSWER AT NEIGHBORS, COULD SEE FURNITURE AND STUFF INSIDE NOT LIGHTS ON.
- g. The cost for attempted service by this method was \$10.00.

11. The Process Server's Affidavit of Due Diligence lists the following attempts at personal service of the Summons and Complaint upon Mikey Brown, who

is the registered agent of LB Entertainment, Inc., which are similar to the attempts listed in the preceding paragraphs because Mikey Brown, individually, and Mikey Brown the Registered Agent of LB Entertainment, Inc. are the same. **[Affidavit Exhibit 7]**.

- a. 9/10/2014 11:12 am Attempted service: 22909 W Eight Mile Road, Detroit, MI 48219 THIS BUSINESS IS CLOSED. NO LONGER IN BUSINESS. LEFT BUSINESS CARD.
- b. 9/22/2014 9:05 am THROUGH SEARCH FOUND POSSIBLE NEW ADDRESS OF 45882 DUTTON DR UNIT 74 MACOMB MI 48044-4090.
- c. 9/23/2014 11:00 am Attempted Service: 45882 DUTTON DR UNIT 74 MACOMB MI 48044, NO ANSWER, NO VEHICLES, LEFT BUSINESS CARD
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- e. 9/30/2014 2:12 pm Attempted Service: 45882 DUTTON DR UNIT 74 MACOMB MI 48044-4090, NO ANSWER, BUSINESS CARD STILL THERE, LEFT ANOTHER, SPOKE TO NEIGHBOR WHITE FEMALE STATES SHE HAS NOT SEEN THEM IN A WHILE THEY MUST BE ON VACATION WHEN I ASKED IF SHE KNEW THERE NAMES SHE STATED SURE I DO BUT I WOULDN'T TELL YOU.
- f. 10/3/2014 8:21 am. Attempted Service: 45882 DUTTON DR UNIT 74 MACOMB MI 48044-4090, NO ANSWER, NO VEHICLES, LEFT BUSINESS CARD, NO ANSWER AT NEIGHBORS, COULD SEE FURNITURE AND STUFF INSIDE NOT LIGHTS ON.
- g. The cost for attempted service by this method was \$10.00.

12. On 10/08/2014, Counsel for Plaintiff served the LB Entertainment, Inc., with a Copy of the Summons and Complaint by sending them to the State of Michigan Dept. of Licensing and Regulatory Affairs Corporations Division PO Box 30054 Lansing, MI 48909 pursuant to Fed.R.Civ.P. 4(e)(1) and MCR 2.105(D)(4), by certified mail, return receipt requested, by article no. 7014 0510 0000 1255 3772. Plaintiff's counsel received the stamped green card back, indicating the mail was delivered on 10/10/2014. **[Affidavit Exhibit 8]**
13. On 10/08/2014, Counsel for the Plaintiff served the LB Entertainment, Inc., with a Copy of the Summons and Complaint by sending them to Mikey Brown, President or Officer of LB Entertainment, Inc. at 22909 W Eight Mile Road, Detroit, MI 48219 pursuant to Fed.R.Civ.P. 4(e)(1) and MCR 2.105(D)(4), by certified mail, return receipt requested. A return receipt for this method was not received. **[Affidavit Exhibit 9]**.
14. 10/08/2014: Plaintiff's counsel again sent a copy of the Summons and Complaint by Certified US Mail, Return Receipt Requested, Delivery Restricted to Mikey Brown at 20551 Asbury Park Detroit, MI 48235 (defendant's last-known address), by certified article no. 7014 0510 0000 1255 3789. After the USPS Completed attempts to deliver the mail, it was

returned on 10/10/2014 as “not deliverable as addressed, unable to forward.”

[Affidavit Exhibit 10].

15. 10/08/2014: Plaintiff’s counsel again sent a copy of the Summons and Complaint by Certified US Mail, Return Receipt Requested, Delivery Restricted to Evyone Jones, this time at 13931 Forrer Detroit, MI 48227-1740 (defendant’s last-known address), by certified article no. 7014 0510 0000 1255 3796. After the USPS Completed attempts to deliver the mail, it was returned on 10/12/2014 as “return to sender, not deliverable as addressed, unable to forward.” **[Affidavit Exhibit 11].**
16. 10/08/2014: Counsel for Plaintiff sent a FOIA request to the USPS requesting information regarding the status of the delivery of mail to Mikey Brown at 20551 Asbury Park Detroit, MI 48235-2107. The USPS responded on 10/14/2014, indicating that the recipient moved, and left no forwarding address. **[Affidavit Exhibit 12].**
17. 10/08/2014: Counsel for Plaintiff sent a FOIA request to the USPS requesting information regarding the status of the delivery of mail to Evyone Jones at 13931 Forrer Detroit, MI 48227-1740. The USPS responded on 10/14/2014, indicating that the address was a vacant lot. **[Affidavit Exhibit 13].**

18. Plaintiff's counsel's attempts to locate the defendants have been exhaustive, and now requests an Order permitting the Plaintiff to serve by alternate means.
19. After a diligent search, the last known address of the individual defendants is unknown.

REQUEST FOR RELIEF

Wherefore, based on all the information available to moving party, the Plaintiff requests that the court enter the order attached to this Motion, or an order substantially similar thereto, granting its motion allowing Alternate Service of the Reissued Summons and Complaint upon Mikey Brown and Eyvone Jones, and to extend the time for service of the Summons and Complaint upon the defendants and for a reissued summons for a period of 30 days for the limited purpose of perfecting Alternate service.

RESPECTFULLY SUBMITTED

Dated: October 31, 2014

/s/ Clinton J. Hubbell
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STATUS, AND MIKEY BROWN
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Jointly and Severally,

Defendants.

No. 2:14-cv-12236-MFL-MKM
Hon. Matthew F. Leitman
Hon. Mona K. Majzoub (referral)

**BRIEF IN SUPPORT OF SECOND MOTION FOR AN ORDER FOR
ALTERNATE SERVICE UPON DEFENDANTS MIKEY BROWN AND
EYVONE JONES AND EXTENDING TIME TO SERVE THE SUMMONS
AND COMPLAINT 30 DAYS TO PERFECT ALTERNATE SERVICE**

A. Alternate Service.

In support of the attached Motion for Alternate Service, the Plaintiff relies on the following court rules, which allow the court, in its discretion, to permit service of process upon a defendant by alternate means.

Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served in a judicial district of the United States by: (1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made;
F.R.Civ.P. 4(e)(1)

The Michigan Court Rules constitute “state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made,” and allow for alternate service of a summons and complaint.

(1) On a showing that service of process cannot reasonably be made as provided by this rule, the court may by order permit service of process to be made in any other manner reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard.

(2) A request for an order under the rule must be made in a verified motion dated not more than 14 days before it is filed. The motion must set forth sufficient facts to show that process cannot be served under this rule and must state the defendant's address or last known address, or that no address of the defendant is known. If the name or present address of the defendant is unknown, the moving party must set forth facts showing diligent inquiry to ascertain it. A hearing on the motion is not required unless the court so directs.

(3) Service of process may not be made under this subrule before entry of the court's order permitting it.

MCR 2.105(I)

Plaintiff's counsel acknowledges and has attempted to cure the deficiencies in light of the reasoning in the 10/07/2014 order, that in Michigan, substituted service “is not an automatic right.” *Krueger v. Williams*, 300 N.W.2d 910, 915 (Mich. 1981). “A truly diligent search for an absentee defendant is absolutely necessary to supply a fair foundation for and legitimacy to the ordering of substituted service.” *Id.* at 919. Plaintiff's counsel avers that it has now satisfied this requirement, and has “set forth sufficient facts to show that process cannot be

served under [MCR 2.105],” and has “stated the defendant's address or last known address, or that no address of the defendant is known,” and has verified this motion with an affidavit signed within 14 days of its filing. Plaintiff therefor seeks an order allowing alternate service by a method or methods, which, in the court’s judgment, are reasonably calculated to give the defendants actual notice of the proceedings and an opportunity to be heard.

B. Reissuance of Summons and Extension of Deadline.

In order to give effect to the Order requested above, a short extension of the deadline to serve is required because the 30 day extension of time to serve the summons and complaint expires on the date this motion is filed.

REQUEST FOR RELIEF

Wherefore, based on all the information available to moving party, the Plaintiff requests that the court enter the proposed order attached to this Motion, or an order substantially similar thereto, granting its motion to extend the time for service of the Summons and Complaint upon the defendants, for a reissued summons and allowing alternate service upon all Defendants with the Reissued Summons and Copy of the Complaint.

RESPECTFULLY SUBMITTED

Dated: October 31, 2014

/s/ Clinton J. Hubbell
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PROOF OF SERVICE

I hereby certify that on October 31, 2014, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the parties currently receiving electronic notices, and all other parties were served via First Class US Mail from Southfield, Michigan.

RESPECTFULLY SUBMITTED

Dated: October 31, 2014

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